

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MICHAEL BRUCE BYNOE,

Petitioner,

vs.

WARDEN HELLING, *et al.*,

Respondents.

3:07-cv-00009-LRH-VPC

ORDER

This represented habeas matter under 28 U.S.C. § 2254 comes before the Court for initial review of the amended petition (#17) under Rule 4 of the Rules Governing Section 2254 Cases.

Following review of the amended petition and exhibits, it appears likely that the claims in the amended petition were not fairly presented to the state courts through to the Supreme Court of Nevada. Petitioner accordingly will be directed to show cause why the petition, as amended, should not be dismissed without prejudice for lack of exhaustion as to any of the claims presented. The show cause response shall provide authority supporting the petitioner's contention that the exhaustion requirement may be avoided in this case on the basis that the petitioner allegedly was inhibited in exhausting his claims by severe mental illness.

It further appears that, absent tolling, the petition, as amended, is time-barred. The judgment of conviction was signed on March 7, 2000, and would appear to have been filed on or about that date. The original petition in this matter was not mailed for filing until nearly seven years later, on or about

1 January 2, 2007. Petitioner accordingly will be directed to show cause why the petition, as amended,
2 should not be dismissed with prejudice as time-barred under 28 U.S.C. § 2244(d). The show cause
3 response shall include argument directed to whether the claims in the amended petition either relate
4 back to the original petition, if timely, or otherwise are not time-barred.

5 IT THEREFORE IS ORDERED that petitioner shall have until up to and including sixty (60)
6 days from entry of this order to SHOW CAUSE why the petition, as amended, should not be dismissed
7 either without prejudice for lack of exhaustion or with prejudice as untimely

8 The respondents may respond to the show cause response, but they are not required to do so.
9 The case remains under initial review pursuant to Rule 4, and the respondents have been directed to
10 enter a notice of appearance at this point solely to allow respondents to be electronically served with
11 the filings and exhibits entered on the CM/ECF docketing system prior to the time that a response is
12 ordered. No further response by respondents shall be required until further order of the Court. If the
13 respondents elect to file a response, they may do so no later than thirty (30) days from service of the
14 show cause response. Petitioner then shall have twenty (20) days from service of the response within
15 which to file a reply.

16 DATED this 4th day of August, 2008.



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20 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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